TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 155

CLARENCE EARL GIDEON, PETITIONER,

vs.

H. G. COCHRAN, JR., DIRECTOR, DIVISION OF CORRECTIONS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR CERTIORARI FILED JANUARY 8, 1962

CERTIORARI GRANTED JUNE 4, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 155

CLARENCE EARL GIDEON, PETITIONER,

vs.

H. G. COCHRAN, JR., DIRECTOR, DIVISION OF CORRECTIONS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

INDEX

	Original	Print
Record from the Circuit Court of Bay County, State of Florida		
Information	1	1
Excerpt from Minute Book of June 29, 1961 postponing arraignment	2	2
Excerpt from Minute Book of July 31, 1961 re arraignment and trial	3	3
Excerpt from Minute Book of August 4, 1961 re trial and verdict	4	4
Jury's verdict	5	4
Excerpt from Minute Book of August 25, 1961 re sentence	6	5
Commitment	7	6
Clerk's certificate (omitted in printing)	8	
Reporter's transcript of trial	1	7
Appearances	1	
Colloquy between court and counsel	2	8
Testimony of Ira Strickland, Jr. direct	8	12
cross	11	14
Henry Cook direct	16	16
cross	20	19
redirect	24	21
Henry Berryhill, Jr. direct	26	22
Duell Pitts direct	29	24
cross	31	25

	Original	Print
Record from the Circuit Court of Bay County, State of Florida—Continued		
Reporter's transcript of trial—Continued		
Testimony of—Continued		
Preston Bray—direct	32	26
—cross	34	27
Mrs. Irene Rhodes—direct	36	29
—cross	41	31
—redirect	41	31
—recross	42	32
Arthur Widincamp—direct	43	33
G. F. "Shorty" Hall—direct	47	35
—cross	49	36
Robert Richardson—direct	50	37
Mrs. Velva Estelle Morris—direct	52	39
—cross	55	40
Colloquy between court and counsel	56	40
Charge of the court	59	42
Proceedings in the Supreme Court of the State of Florida	64	45
Petition for writ of habeas corpus	64	45
Order denying petition for writ of habeas corpus	67	47
Clerk's certificate (omitted in printing)	68	
Order granting motion for leave to proceed in forma pauperis and petition for writ of certiorari	69	47

[fol. 1]

IN THE CIRCUIT COURT OF BAY COUNTY, STATE OF FLORIDA

STATE OF FLORIDA

vs.

CLARENCE EARL GIDEON

INFORMATION CHARGING BREAKING AND ENTERING WITH INTENT TO COMMIT A MISDEMEANOR—Filed June 19, 1961

J. Frank Adams, as State Attorney for the 14th Judicial Circuit of the State of Florida, prosecuting for said State in the County of Bay, under oath informs the Court that Clarence Earl Gideon, on the 3rd day of June, A. D. 1961, in the State and County aforesaid, did unlawfully and feloniously break and enter a building of another, to-wit, The Bay Harbor Poolroom, property of Ira Strickland, Jr., lessee, with intent to commit a misdemeanor within said building, to-wit, petit larceny, contrary to the form of the Statutes in such cases made and provided and against the peace and dignity of the State of Florida.

J. Frank Adams, State Attorney.

[fol. 1a] Personally appeared before me, J. Frank Adams, State Attorney for the 14th Judicial Circuit of the State of Florida, who, being first duly sworn, says that the allegations as set forth in this Information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged.

J. Frank Adams, State Attorney.

Sworn to and subscribed before me this June 19, 1961.

Bruce Collins, Clerk of the Circuit Court. By Dolores Welborn, Deputy Clerk.

The Defendant, being duly arraigned upon this information, pleaded Not Guilty. Witness my hand and official seal this July 31, 1961.

Bruce Collins, Clerk of the Circuit Court. By Dolores Welborn, Deputy Clerk.

CIRCUIT COURT OF BAY COUNTY, STATE OF FLORIDA

C-1371 61-71

STATE OF FLORIDA

vs.

CLARENCE EARL GIDEON

INFORMATION CHARGING BREAKING AND ENTERING WITH INTENT TO COMMIT A MISDEMEANOR

Witnesses for State: Ira Strickland, Jr., Henry Cook, Duell Pitts, Preston Bray, Irene Rhodes.

Filed this June 19, 1961. Bruce Collins, Clerk of the Circuit Court. By Dolores Welborn, Deputy Clerk.

[fol. 2] IN THE CIRCUIT COURT OF BAY COUNTY, STATE OF FLORIDA

EXCERPT FROM CIRCUIT COURT MINUTE BOOK OF JUNE 29, 1961

STATE OF FLORIDA

vs.

CLARENCE EARL GIDEON

#C-1371 (61-71)

BREAKING AND ENTERING

Defendant requested permission to consult counsel before being arraigned. Arraignment was, therefore, postponed until July 31, 1961, at 9:00 o'clock A.M.

[fol. 3] IN THE CIRCUIT COURT OF BAY COUNTY, STATE OF FLORIDA

EXCERPT FROM CIRCUIT COURT MINUTE BOOK ON JULY 31, 1961

Court convened at 9:00 o'clock A.M. with the Honorable Robert L. McCrary, Jr., Judge, presiding. Court was opened by proclamation of the Sheriff, and opening prayer was delivered by Judge McCrary.

The Court then called the following case:

STATE OF FLORIDA

vs.

CLARENCE E. GIDEON

#C-1371 (61-71)

BREAKING AND ENTERING WITH INTENT TO COMMIT A MISDEMEANOR

Defendant was questioned by the Court concerning his understanding of the charge filed against him and of his rights under the law. He, having answered all questions to the Court, was thereupon duly arraigned. He entered a plea of "Not Guilty". Trial was set for August 4, 1961. The Court ordered the Clerk to issue witness subpoenas for the defendant to the following: Arthur Weidencamp; Robert Richardson; Mrs. Belva Morris; and Shorty Hall.

[fol. 4] IN THE CIRCUIT COURT OF BAY COUNTY, STATE OF FLORIDA

EXCERPT FROM CIRCUIT COURT MINUTE BOOK OF AUGUST 4, 1961

STATE OF FLORIDA

vs.

CLARENCE EARL GIDEON

#C-1371 (61-71)

BREAKING AND ENTERING WITH INTENT TO COMMIT A MISDEMEANOR

The State, through its attorney, and the defendant announced ready for trial, whereupon a jury was selected, empaneled and sworn as follows: Hugh W. White, Jr., Graham A. Garren, Wallace E. Lunsford, Tage Genberg, John H. Gibbs, and C. J. Sampley. After hearing all the evidence, the jury received the charge of the Court and retired to consider of its verdict. The following verdict was returned:

"We, the jury, find the defendant, Clarence Earl Gideon, guilty as charged. So say we all."

/s C. J. Sampley, Foreman

Imposition of sentence was withheld pending receipt of an investigative report of defendant's past history.

[fol. 5] IN THE CIRCUIT COURT OF BAY COUNTY, STATE OF FLORIDA

STATE OF FLORIDA

vs.

CLARENCE EARL GIDEON

JURY'S VERDICT

We, the jury, find the defendant, Clarence Earl Gideon, guilty as charged. So say we all.

C. J. Sampley, Foreman.

[fol. 6] IN THE CIRCUIT COURT OF BAY COUNTY, STATE OF FLORIDA

EXCERPT FROM CIRCUIT COURT MINUTE BOOK OF AUGUST 25, 1961

STATE OF FLORIDA

vs.

CLARENCE EARL GIDEON

#C-1371 (61-71)

BREAKING AND ENTERING WITH INTENT TO COMMIT A MISDEMEANOR

Defendant was asked by the Court whether he had anything to say as to why the judgment of the Court and the sentence of the law should not now be pronounced against him. He, having nothing to say, the Court proceeded to propounce the following judgment and sentence:

> "You, Clarence Earl Gideon, having been convicted by a jury of the offense of Breaking and Entering with Intent to Commit a Misdemeanor, the Court adjudges you to be guilty. It is the judgment of the Court and the sentence of the law that you, Clarence Earl Gideon, for your said offense, be committed to the State Prison of the State of Florida for a period of Five Years."

[fol. 7] IN THE CIRCUIT COURT OF BAY COUNTY, STATE OF FLORIDA

UNIFORM COMMITMENT TO CUSTODY OF DIVISION OF CORRECTIONS

Fourteenth Judicial Circuit

Bay County, Fall Term, 1961

Conviction for Breaking & Entering With Intent to Commit a Misdemeanor.

Date of conviction August 4, 1961.

Date of sentence imposed August 25, 1961.

Term of sentence Five (5) years.

#61-71

STATE OF FLORIDA, Plaintiff

vs.

CLARENCE EARL GIDEON, Defendant.

In the name and by the Authority of the State of Florida, to the Sheriff of said County and the Division of Corrections of said State, Greeting:

The above named defendant having been duly charged with the above named offense in the above styled Court, and he having been duly convicted and adjudged guilty of and sentenced for said offense by said Court, as appears from the attached certified copies of information, judgment and sentence, which are hereby made parts hereof:

Now, therefore, this is to command you, the said Sheriff, to take and keep and, within a reasonable time after receiving this commitment, safely deliver the said defendant into the custody of the Division of Corrections of the State of Florida; and this is to command you, the said Division of Corrections, by and through your director, superintendents, wardens, and other officials, to keep and safely imprison the said defendant for the term of said sentence in the institution in the state correctional system to which you, the said Division of Corrections, may cause the said defendant to be conveyed or thereafter transferred. And these presents shall be your authority for the same, Herein fail not.

Witness the Honorable Robert L. McCrary, Jr., Judge of said Court, as also Bruce Collins, Clerk, and the Seal thereof, this the 30 day of August, 1961.

_____, Clerk of said Court.

(To be used in committing defendants under indeterminate sentences as well as under sentences of imprisonment for definite periods.)

[fol. 8] CERTIFICATE OF CLERK (omitted in Printing)

[fol. 1] In the Circuit Court, Fourteenth Judicial Circuit of the State of Florida in and for Bay County

State of Florida, Plaintiff,

vs.

Clarence Earl Gideon, Defendant

Reporter's Transcript of Trial

Be It Remembered That this case came on for trial in the regular Spring Term of Circuit Court in and for Bay County, Florida, on the 4th day of August, 1962 [sic-1961] before the Honorable Robert L. McCrary, Jr., one of the Circuit Judges of the above styled Court, Presiding, and a Jury drawn from the Regular Venire.

Appearances

For the Plaintiff, State of Florida: William E. Harris, Esquire, Assistant State Attorney, in and for the Fourteenth Judicial Circuit of the State of Florida, 201 East 4th Street, Panama City, Florida.

For the Defendant, Clarence Earl Gideon, The Defendant in Pro Per.

[fol. 2] Colloquy Between Court and Counsel

Court was called to Order by Deputy Sheriff, J. C. Gilbert.

His Honor, Judge McCrary, seated on the Bench.

Counsel for the State, Honorable William E. Harris, Assistant State Attorney, and the Defendant, Clarence Earl Gideon, seated at the Counsel Table.

Immediately following the formal opening of the Court the following transpired:

The Court: The next case on the Docket is the case of the State of Florida, Plaintiff, vs. Clarence Earl Gideon, Defendant. What says the State, are you ready to go to trial in this case?

Mr. Harris: The State is ready, your Honor.

The Court: What says the Defendant? Are you ready to go to trial?

The Defendant: I am not ready, your Honor.

The Court: Did you plead not guilty to this charge by reason of insanity?

The Defendant: No, sir.

The Court: Why aren't you ready?

The Defendant: I have no Counsel.

[fol. 3] The Court: Why do you not have Counsel? Did you not know that your case was set for trial today?

The Defendant: Yes, sir, I knew that it was set for trial today.

The Court: Why, then, did you not secure Counsel and be prepared to go to trial?

The Defendant answered the Court's question, but spoke in such low tones that it was not audible.

The Court: Come closer up, Mr. Gideon, I can't understand you, I don't know what you said, and the Reporter didn't understand you either.

At this point the Defendant arose from his chair where he was seated at the Counsel Table, and walked up and stood directly in front of the Bench, facing his Honor, Judge McCrary.

The Court: Now, tell us what you said again, so we can understand you, please.

The Defendant: Your Honor, I said: I request this Court to appoint Counsel to represent me in this trial.

The Court: Mr. Gideon, I am sorry, but I cannot appoint [fol. 4] Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint Counsel to defend you in this case.

The Defendant: The United States Supreme Court says I am entitled to be represented by Counsel.

The Court: (Addressing the Reporter)

Let the record show that the Defendant has asked the Court to appoint Counsel to represent him in this trial and the Court denied the request, and informed the Defendant that the only time the Court could appoint Counsel to represent a Defendant was in cases where the Defendant was charged with a capital offense. The Defendant stated to the Court that the United States Supreme Court said he was entitled to it.

(Addressing the Defendant)

Are you now ready to go to trial?

The Defendant: Yes, sir.

The Court: Call a Jury, Mr. Sheriff.

Thereupon, a venire of six men were called as prospective Jurors to try this case. These six men were examined [fol. 5] as to their qualification to sit as Jurors to try this case by Mr. Harris, Assistant State Attorney, and after proper interrogation of each man called, individually and collectively, Mr. Harris announced:

The State accepts the panel, your Honor.

The Court: (Addressing the prospective Jurors)

Gentlemen, since this Defendant is not represented by Counsel, I want to ask you some questions on his behalf.

By the Court:

Q. Do any of you Gentlemen know this Defendant here, Clarence Earl Gideon?

A. No, sir.

Q. This, also, applies to all of you. Will you give him the same fair trial, and consideration, since he is not represented by Counsel, that you would if he were represented by Counsel?

A. Yes, sir.

Q. Each one of you said you did not know him, therefore, I presume you have no bias for or prejudice against him?

A. No, sir.

Q. Will each of you pay close attention to the testimony as you hear it from that witness stand and, if, after you have heard all of the testimony, there is a doubt in your mind that this Defendant is not guilty of the crime he is charged with in this Information, will you give him the benefit of that doubt and acquit him?

[fol. 6] A. Yes, sir.

Q. You will be fair to him as well as fair to the State in rendering your verdict in this case?

A. Yes, sir.

The Court: That's all the questions I have.

Now, Mr. Gideon, look these six Gentlemen over and if you don't want them to sit as a Jury to try your case, just point out the one, or more, all six of them if you want to, and the Court will excuse them and we will call another, or some others, to try your case. You don't have to have a

reason, just look them over and if you don't like their looks that's all it takes to get them excused, just point out any one, two, three, four, five or all six of them if you want to and the Court will excuse them.

The Defendant: They suit me allright, your Honor.

The Court: You are willing for these six men to try your case?

The Defendant: Yes, sir.

The Court: You accept them as a Jury to try your case?

The Defendant: Yes, sir.

[fol. 7] The Court: You are willing for these six men to sit as a Jury and try your case, now, are you?

The Defendant: Yes, sir.

The Court: Swear the Jury, Mr. Clerk.

Thereupon, the six men selected and accepted to try this case were sworn as a Jury by Honorable Bruce Collins, Clerk of the Circuit Court of Bay County, Florida.

The Court: You may proceed.

The witnesses were called, admonished by the Court, and put under the rule.

Mr. Harris, the Assistant State Attorney, then read the Information on file in this case to the Jury and told them what he expected the testimony on behalf of the State to show.

The Court: Mr. Gideon, would you like to tell the Jury what you expect the evidence in your behalf to show?

The Defendant: Yes, your Honor, I would like to.

The Court: Allright, you may do so at this time. Just [fol. 8] walk right around there where you can see them, and they can see you, and tell them what you expect the evidence to show in your favor. Talk loud enough for them to hear you, now.

At this point the Defendant walked around the Counsel Table and stood facing the Jury and told them what he expected the evidence on his behalf to show.

Mr. Harris: May we proceed, your Honor?

The Court: Yes, you may proceed.

The Plaintiff, State of Florida, to sustain the allegations contained in the Information on file in this case, then offered the following testimony.

IRA STRICKLAND, JR., called as a witness on behalf of the Plaintiff, State of Florida, being first duly sworn by the Clerk of this Court, testified as follows:

Direct examination.

By Mr. Harris:

Q. Will you state your name, please?
A. Ira Strickland, Jr.
Q. Where do you live, Mr. Strickland?
A. 3307 Second Place, Springfield.
Q. Is that in Bay County, Florida, Mr. Strickland?
A. Yes, sir.
[fol. 9] Q. What is your present occupation?
A. Sir?
Q. What do you do for a living?
A. I own the Bay Harbor Pool Room.
Q. Did you own the Bay Harbor Pool Room on June 3, 1961?
A. Yes, sir.
Q. You were operating it there on that date?
A. Yes, sir.
Q. Do you own the building and the land?
A. No, sir, I rent.
Q. From whom do you rent?
A. Mr. Widincamp—Arthur Widincamp.
Q. And you were operating that place on that date?
A. I was.
Q. What time did you close your business up?
A. Twelve o'clock, that night.
Q. Were you the last one to leave the building?
A. Yes, sir.
Q. Did you lock and secure the place?
A. Yes, sir.
Q. All the doors were locked and all the windows closed and fastened?
A. Yes, sir.
[fol. 10] Q. When did you enter the building again?
A. The next morning, about eight o'clock.
Q. What did you find when you went back to the building?
A. I found Mr. Pitts and a couple of other Gentlemen were there waiting until I came down that morning. The

entrance to the building had already been detected at that time, when I arrived there. I was called out and when I arrived that's what I found.

Q. When you looked around the building did you find where entrance was made?

A. Yes, sir.

Q. How was it made?

A. Through a window that didn't have any bars on it, in the back of the building.

Q. Did you find anything damaged inside, other than the window being broken out?

A. A Cigarette Machine and "Juke" Box had been broken into, and some stock had been removed.

Q. What stock had been removed, or was missing?

A. A small amount of Beer and some Wine.

Q. Do you know whether there was any money in the Cigarette Machine and the "Juke" Box?

A. Yes, sir, there was money in each one of them.

Q. Do you know the amount?

A. No, sir, I don't.

[fol. 11] Q. You know there was money in those machines prior to the time they were broken into?

A. Yes, sir, I do know that.

Q. You had no way of knowing how much money was in either one?

A. No, sir, I didn't. They were the kind that operates automatically.

Q. They were both of the same kind, that is, operated automatically, the kind where you put your money in and get your Cigarettes, or play music?

A. Yes, sir, they was.

Q. Where is the Bay Harbor Pool Room located?

A. 109 Edwin Avenue.

Q. Panama City, Florida.

A. Yes, sir.

Q. These things you have testified about occurred on June 3, 1961?

A. Yes, sir.

Q. In Bay County, Panama City, Florida?

A. Yes, sir.

Mr. Harris: You may inquire.

Cross-examination.

By the Defendant:

Q: Would you give the Jury a description of the building?
[fol. 12] A. I didn't understand the question.

The Court: (Addressing the Defendant.)
'Would you give the Jury a description of the building.' Was that your question?
The Defendant: Yes, sir.
The Court: (Addressing the witness.)
Did you understand the question then?
The Witness: Yes, sir.
The Court: Go ahead and answer it.
Witness: A. I believe it's approximately twenty-five feet (25') wide and a hundred feet (100') long. There is a small partition between the building, but no door attached, just a dividing partition, with a Bar running along with the building, longthwise. All of the windows, except two in the rear, had bars in them; there had been an addition put on to the building and at that time there were no bars installed in those windows. But after this happened we have installed bars there. I believe that is about as near as I can get at it for you.

By the Defendant:

Q. Where does the "Juke" Box sit in the building?
[fol. 13] A. In the extreme front of the building.
Q. Where does the Cigarette Machine sit in the building?
A. It also sets in front of the building.
Q. Did you see these machines after they had been broken into?
A. Yes, sir.
Q. How was this window broken?
A. When I arrived that morning the window was broken out. There was a garbage can that had been removed from the back and carried around to the side and I assumed the purpose of it was to enter the building through the window, to step up on.
Q. What is the size of that window?
A. What is the size?
Q. Yes.

A. I couldn't say exactly, I don't know the exact dimensions, I would say it's about twenty four by thirty two (24x32").

Q. What type window was it?

A. It was a Glass Window. I couldn't tell you the brand name of it, I don't know who it was made by.

Q. How does it open?

A. Lifts, up and down.

Q. Could you open the window?

A. Yes, sir, by unlocking it. It had a latch on the inside, in the middle of the window, that secured it from being [fol. 14] moved up or down from the outside when the latch was fastened on the inside. You had to unlatch it inside in order to move it either way.

Q. Lots of windows lift up and down to open don't they?

A. Yes, sir.

Q. In what respect was the window broken?

A. I couldn't tell you that, but the window was broken out. The glass was broken out, all the glass was out of it.

Q. Was it broken from the inside or the outside?

A. I assume that it was broken from the outside.

Q. Mr. Strickland, did you ever go off and leave your building unlocked?

A. Yes, sir.

Q. You have?

A. Yes, sir, I have, for a short while.

Q. Did you ever go off and leave it unlocked over night?

A. No, sir.

Q. Did you ever leave your building open?

The Court: I don't think that has any bearing on this case. The testimony here is that the building was securely locked on the night of this entrance into it through a broken window. That particular time is all we are interested in here, what has been done prior to this time would have no bearing on this case.

[fol. 15] By the Defendant:

Q. You locked the building that night?

A. Yes, sir.

Q. You are positive of that?

A. I am positive, yes, sir.

Q. Do you know positively what merchandise was removed from the building?

A. No, sir, I don't. I do know there was some Wine and Beer taken out, but I can't tell you exactly how much, it was removed from the shelves in the Bar.

Q. I wish you would tell this Court and Jury just what this person took out of the building.

A. I can't tell them exactly what was taken out, I don't know.

Q. What do you mean by 'I don't know,' you have said that certain things were taken out, or removed from the building. Now, will you tell the Court and Jury just exactly what was taken out, how much of each item was taken, that you have stated was taken, including the money you say was in the "Juke" Box and Cigarette Machine?

The Court: This witness has testified that he did not know how much Wine or Beer was taken. He has also stated that he had no way of knowing how much money was in the "Juke" Box and Cigarette Machine, because they were both automatic machines and he had no way of knowing.

[fol. 16] Do you want to ask him any more questions?

The Defendant: No, sir, that's all.

Mr. Harris: Come down, Mr. Strickland.

This witness then left the stand.

Henry Cook, called as a witness on behalf of the Plaintiff, State of Florida, being first duly sworn by the Clerk of this Court, testified as follows:

Direct examination.

By Mr. Harris:

Q. Will you state your name, please?

A. Henry Cook.

Q. Where do you live, Mr. Cook?

A. 108 East Avenue.

Q. Is that in Panama City, Bay County, Florida?

A. Yes, sir.

Q. Do you know where the Bay Harbor Pool Room is?

A. Yes, sir.

Q. Where is it located?

A. 109 Edwin Avenue.

Q. Panama City, Bay County, Florida?

A. Yes, sir.

Q. Were you in, or near, the Bay Harbor Pool Room on [fol. 17] June 3, 1961?

A. Yes, sir.

Q. At what time?

A. Approximately five-thirty, A.M.

Q. Five-thirty in the morning?

A. Yes, sir.

Q. Do you know Clarence Earl Gideon, this man sitting here at the Counsel Table?

A. Yes, sir.

Q. Did you see him there that morning?

A. Yes, sir.

Q. Where did you see him?

A. I saw him in the Pool Room.

Q. What was he doing when you saw him in the Pool Room?

A. He was standing up by the Cigarette Machine.

Q. Was he doing anything to the Cigarette Machine?

A. No, sir, not that I seen.

Q. Did you see anyone else in the Pool Room at that time?

A. No, sir.

Q. No one but Mr. Gideon was in there?

A. He is the only one I saw.

Q. What did you do, just stand there and watch him?

A. I stood and watched him for a few seconds, maybe a full minute, or a little more.

Q. Then what did you do?

[fol. 18] A. I walked on down to the corner, and came back, and he came out.

Q. You saw him when he came out of the Pool Room?

A. Yes, sir.

Q. How did he come out?

A. At the back door.

Q. Came out the back door?

A. Yes, sir.

Q. What did he do then?

A. Went down to the Drug Store and called a Cab.

Q. Did you see anything on him?

A. I saw that he had some Wine.

Q. You saw some Wine on him?

A. Yes, sir.

Q. Is that all you could see on him?

A. I saw his pockets bulged out, but I didn't know what was in them.

Q. Did you go back to Bay Harbor Pool Room after that?

A. Yes, sir.

Q. Did you see Mr. Gideon when he got in the Cab?

A. Yes, sir.

Q. Then, what did you do?

A. I went back down to the Pool Room and I saw it had been broken into.

Q. How did you determine that?

[fol. 19] A. Well, I saw the face of the Cigarette Machine open and 'stuff' laying on the Pool Table.

Q. Was that the same Cigarette Machine that you saw Mr. Gideon standing next to?

A. Yes, sir.

Q. When you first saw him in there did you see anything wrong with the Cigarette Machine?

A. I didn't notice, I just seen him.

Q. When you first looked in there and saw him you saw him standing by the Cigarette Machine?

A. Yes, sir.

Q. And you didn't see anything wrong with the Cigarette Machine then?

A. No, sir.

Q. After he left in the Cab and you came back, then, you found the Cigarette Machine had been broken into?

A. Yes, sir.

Q. Did you find any other damage done there in the Pool Room?

A. Well, I seen 'stuff' laying on the pool table there, 'stuff' that he had pulled out of the machine, I suppose, the money box was laying on the pool table and the Cigarette Machine was all torn up, the face and all was lying there on the table with the money box.

Q. What did you do after you saw him come out of the building, Mr. Cook?

[fol. 20] A. I went up to the corner and watched him get in a Cab.

Q. With a Cab Driver?

A. Yes, sir.

Q. Did you know the Cab Driver?

A. Yes, sir.

Q. Was that Preston Gray?

A. Yes, sir.

Q. When you went back to the building, after you saw Mr. Gideon come out of the building, out the back door, did you see any broken window in the building?

A. Yes, sir, there was a window broken out.

Q. Did you see anything else, besides the broken window?

A. I saw a Red Can by the window.

Q. And the window was broken out?

A. Yes, sir.

Q. That was all the damage you saw that had been done to the building, just a window broken out?

A. Yes, sir.

Mr. Harris: You may inquire.

Cross-examination.

By the Defendant:

Q. How long have you lived here?

A. About five years.

Q. Have you ever been arrested?

[fol. 21] Mr. Harris: The State objects to that question, if the Court please. That is an improper question.

The Court: Objection sustained.

Mr. Gideon, you can ask him if he has ever been convicted of a criminal offense. That would be a proper question if you want to prove whether he has been convicted of a criminal offense.

By the Defendant:

Q. Have you ever been convicted of a felony.

A. No, sir, never have.

Q. On this morning when you claim you were out at five-thirty, what were you doing out at that time of the morning?

A. I had just come from a dance, down in Apalachicola —stayed out all night.

Q. Was it dark or daylight?

A. It was dark enough that I had to put my head up to the window to see you—but I seen you.

Q. And where did you go after that?

A. I walked up to the corner.

Q. You walked up to the corner, eh?

A. Yes, sir.

Q. When was the next time you seen me?

A. When I saw you walk up and get in the Cab.

[fol. 22] Q. Didn't you just get through saying you saw me come out the back door of the Pool Room?

A. You said the 'next time'—I first saw you through the window, in the Pool Room, standing up by the Cigarette Machine—the next time I saw you then was when you come out the back door and walked up to the corner and called a Cab—and the next time I saw you was when you walked up and got in the Cab.

Q. How could you see me come out of the back door?

A. I seen you come out just as I walked by.

Q. You say I come out of the building and walked up to the corner, how did you see me?

A. You were there about the same time I was—it was you—I'm definitely sure of that.

Q. You said I was carrying something—what was I carrying?

A. A pint of Wine.

Q. A 'what'?

A. A pint of Wine.

Q. A pint of Wine?

A. Yes, sir, a pint of Wine.

Q. Do you know positively that I was carrying a pint of Wine?

A. Yes, I know you was.

Q. How do you know that?

A. Because I seen it in your hand.

[fol. 23] Q. And you saw me with a pint of Wine?

A. Yes.

Q. How far away from me were you?

A. I was about twenty yards, or less, something like that.

Q. Do you know where I live out there?

A. Yes.

Q. Where do I live?

A. You live in the Bay Harbor Hotel.

Q. Where is it at?

A. Right across the street from the Pool Hall.

Q. Did I do anything out of the way?

A. Well, you acted kinder drunk. I didn't know whether you was or not.

Q. Would you say I was drunk?

A. I don't know for sure, so I couldn't say.

Q. You are positive that you saw me come out of the Pool Room, when there are two buildings that you would have to see around, if you were on the corner as you said, to positively see me, or anyone else?

A. I'm positive I saw you come out, yes.

Q. You were standing on the corner?

A. I was standing on the corner shortly before you walked out, when I walked by you walked out the back door.

Q. Did you see this so-called window that was broken out in the building?

[fol. 24] A. Say that again, I didn't understand you.

Q. Did you see that window that was broken out?

A. Yes, I saw it.

Q. How was it broken?

A. Well, it was broken all-to-pieces, it was laying outside on the ground.

Q. No glass left in it at all?

A. There might have been a small piece left in the corner, but that's all, if there was any.

Q. All the glass was on the outside of the building?

A. All that I saw was on the outside.

The Defendant. That's all.

The Court: You don't want to ask him any more questions?

The Defendant: No.

Redirect Examination.

By Mr. Harris:

Q. Mr. Cook, you had already seen this man inside the building before you saw him come out the back door of the building?

A. Yes, sir.

Q. Did you know Mr. Gideon before that time?

A. Yes, sir.

[fol. 25] Mr. Harris: The State rests. That's our case, your Honor.

The Court: Allright, Mr. Gideon, the State has put on its case. You have a right now to take the stand, if you wish to, you will not be required to take the stand; and it will not be held against you if you do not take the stand, but if you want to you can take the stand and tell the Jury your side of this case, and if you do take the stand and testify, then, the State Attorney will have the privilige of asking you questions on cross examination about what you testified to.

Would you like to take the stand now, or would you like to call your witnesses first and decide later whether you want to take the stand or not?

The Defendant: I would like to call my witnesses.

The Court: Allright. Just tell the Sheriff who you would like called and he will call them.

The Defendant, to sustain his plea of not guilty to the charge contained in the Information on file in this case, then offered the following testimony.

[fol. 26] The Court: You understand, Mr. Gideon, that the witnesses you call are your witnesses, and it's up to you to vouch for them. You understand that do you?

The Defendant: Yes, sir, I understand it.

The Court: Allright. Who would you like to have called?

The Defendant: Henry Berryhill, Jr.

The Court: Call Henry Berryhill, Jr., Mr. Sheriff.

Henry Berryhill, Jr., called as a witness on behalf of the Defendant, being first duly sworn by the Clerk of this Court, testified as follows:

The Court: Mr. Berryhill, you have been called as a witness on behalf of Clarence Earl Gideon, who is on trial upon an Information charging him with Breaking and Entering with Intent to Commit a Misdemeanor. He will ask you some questions.

(Addressing the Defendant)

You may inquire.

Direct examination.

By the Defendant:

Q. Mr. Berryhill, would you mind telling the Jury and [fol. 27] the Court what time you were called in to investi-

gate this Breaking and Entering of the Bay Harbor Pool Room?

A. I did not have a call, Mr. Gideon, I was Patrolling the area, checking the buildings, at approximately five or five-fifteen in the morning.

Q. Who notified you?

A. Nobody notified me, I found the door open in the building and I checked with a fellow up at the front of the building, a Mr. Cook, and from his report, he said he saw you leave the building.

Q. Did you notify anybody then?

A. Yes, sir, I called the Investigation Department, which was Lavelle Pitts.

Q. Did you call him yourself?

A. Yes, sir.

Q. How was entrance gained into the building?

A. Through a window, on the North side of the building, the back, to the left of the back door.

Q. Was it broken completely out?

A. Yes, sir.

Q. Was it broken from the inside or outside?

A. It was broken from the outside.

Q. How could you tell it was broken from the outside?

A. Because part of the glass was on the inside, some of it was outside where they had pulled the rest of it out after it was broken.

[fol. 28] Q. You are positive the window was broken from the outside?

A. Yes, sir, it was.

Q. You wouldn't know about what time it was broken would you?

A. No, sir. It was broken when I discovered it, but I don't know how long it had been broken.

The Defendant: That's all.

The Court: Any questions by the State?

Mr. Harris: No questions, your Honor.

The Court: Mr. Berryhill, let me ask you if you work at night?

Witness: Yes, sir, I work at night.

The Court: Any objection from the State or the Defendant to excusing Mr. Berryhill? He looks like he needs to get some sleep.

Mr. Harris: No objection from the State.

The Court: Mr. Gideon, do you have any objection to Mr. Berryhill being excused? Do you think you might want to call him back later?

[fol. 29] The Defendant: No sir, I have no objection. I don't plan to call him back.

The Court: You may be excused, Mr. Berryhill.

Witness: May I leave the Court House now?

The Court: Yes, sir, you may go home— or anywhere you would like to go, you are excused and may leave at this time, if you would like to.

Witness: Thank you, Judge.

This witness then left the stand.

Duell Pitts, called as a witness on behalf of the Defendant, being first duly sworn by the Clerk of this Court, testified as follows:

The Court: Mr. Pitts, you have been called as a witness here on behalf of Clarence Earl Gideon, who has been charged in an Information with Breaking and Entering with Intent to Commit a Misdemeanor. He will ask you some questions.

(Addressing the Defendant)

You may proceed.

[fol. 30] Direct examination.

By the Defendant:

Q. Mr. Pitts, will you tell the Court and this Jury what you found when you arrived at the Bay Harbor Pool Room, on the morning of June 3, this year, when it is alleged the place was broken into?

A. Well, when I got there I went inside and found the Cigarette Machine and the "Juke" Box had been broken into, and on further investigation I found that a window on the North side of the building had been broken into, apparently, to gain entrance to the building inside.

Q. Was the whole window broken?

A. No, it wasn't all broke out, there was some small

pieces of glass left in the top corners, but most of it was broke out.

Q. How much of it was broken out?

A. Approximately twenty inches to twenty-four inches (20-24") wide and two to two and one-half feet long, something like that.

Q. Was this window broken from the inside or outside?

A. I would say from the outside.

Q. Mr. Pitts, has it ever occurred to you, or did you ever an idea that I might have broken that window out?

A. That's what you are up here on trial for.

Q. But did you ever investigate to see whether or not [fol. 31] I broke it out?

A. We had an eye-witness to it, Mr. Cook saw you when you came out of the building.

Q. That was satisfactory to you?

A. Yes, I was fairly satisfied with what he told me, I had no reason to doubt it.

Q. How did you determine the window was broken from the outside?

A. From the way the glass fell. If a window is broken from the outside most of the glass will fall inside, and most of this glass was on the inside.

The Defendant: That's all.

The Court: Any questions by the State?

Mr. Harris: I would like to ask him one question.

The Court: You may proceed.

Cross-examination:

By Mr. Harris:

Q. Mr. Pitts, will you tell us whether or not you are a Deputy Sheriff in Bay County, Florida, and if so, were you such Deputy Sheriff on the 3d day of June, 1961?

A. Yes, sir, I was a Deputy Sheriff of Bay County, [fol. 32] Florida, on the 3rd day of June, 1961, and I am still a Deputy Sheriff, and I work in the Investigation Department of the Sheriff's Office of Bay County, Florida.

Mr. Harris: That's all.

This witness then left the stand.

PRESTON BRAY, called as a witness on behalf of the Defendant, being first duly sworn by the Clerk of this Court, testified as follows:

The Court: Will you state your full name, for the record, please.

Witness: Preston Bray.

The Court: Where do you live?

Witness: 3409 Second Court, Panama City, Bay County, Florida.

The Court: Clarence Earl Gideon is being tried here on a charge of breaking and entering the Bay Harbor Pool Room. Do you know anything about that?

Witness: No, sir, I don't.

The Court: He wants to ask you some questions. You [fol. 33] may proceed.

Direct examination

By the Defendant:

Q. Preston, the morning I called you, as a Cab Driver you were driving a Cab weren't you, is that right?

A. That's right.

Q. Was it anything out of the ordinary for me to call you?

A. No, sir, you called me all the time.

Q. That morning did I have any Wine, Beer, Whiskey or any other intoxicating drinks on me, or with me?

A. No, sir, not that I could see.

Q. If I had had any I would have to have had it in my pocket wouldn't I?

A. Yes, sir, I believe so, you didn't have any bag and had nothing in your hands, that I seen.

Q. Preston, you and I are pretty good friends, is that true?

A. Yes, sir.

Q. I'm in the habit of going to your house and drinking Coffee, not every morning, but lots of mornings I do that?

A. Yes, sir.

Q. Was there anything out of the ordinary in me walking out of that Public Telephone Booth there on the corner?

A. I wouldn't know that.

Q. I live across the street from there do I not?
A. Yes, sir.
[fol. 34] Q. That is a Public Telephone Booth there on the corner where you picked me up that morning?
A. Yes, sir, it is.
Q. Would you say I was intoxicated that morning?
A. No, sir, I wouldn't.
Q. Did I give any reason for going to town?
A. No, you didn't.

The Defendant: I don't think there's anything else I want to ask him.
The Court: Does the State have any questions?
Mr. Harris: Yes, your Honor.

Cross-examination.

By Mr. Harris:

Q. Mr. Bray, did I understand you to say you had known Mr. Clarence Earl Gideon for sometime?
A. Yes, sir.
Q. Do you know whether or not he was unemployed at that time, and had been unemployed for sometime?
A. I know he was working at the Pool Room—now, whether he was getting paid or not, I don't know.
Q. Did he ride your Cab regularly, fairly regularly?
A. Not regular, but when he needed a Cab he always called me.
[fol. 35] Where did you take him on this morning?
A. Fourth and Harrison.
Q. That is right uptown in the City of Panama City?
A. Yes, sir.
Q. You just let him out on the street there?
A. Yes, sir.
Q. How much was the Cab fare?
A. A dollar ($1.00).
Q. Did he give you a tip?
A. Yes, sir.
Q. How much tip did he give you?
A. Fifty cents.
Q. What kind of money did he pay you with?
A. Quarters.

Q. Was it a custom for him to tip you?

A. Yes, sir, every time he's ever rode in my Cab he's give me a tip.

Q. Did he give you a dollar tip that morning?

A. No, sir, just fifty cents—he give me two quarters.

Q. Has he ever given you a dollar tip?

A. Yes, sir.

Q. Did he ever give you a two-dollar tip?

A. No, sir, just a dollar—that's the most he ever give me.

Mr. Harris: That's all.

[fol. 36] The Court: You may come down, Mr. Bray.

Witness: Judge, may I be excused now? I need to get back to work.

The Court: Do either of you have any objection to this witness being excused?

Mr. Harris: The State has no objection, your Honor.

The Court: How about you, Mr. Gideon, do you have any objection to this witness being excused? He's your witness, now, and if you think you might want to recall him we will not excuse him.

The Defendant: No, sir, I don't want to recall him. Let him go.

The Court: You may go.

Witness: Thank you, Judge.

This witness then left the stand.

Mrs. Irene Rhodes, called as a witness on behalf of the Defendant, being first duly sworn by the Clerk of this Court, testified as follows:

[fol. 37] The Court: Will you state your name, please?

Witness: Irene Rhodes.

The Court: You have been called here as a witness by Clarence Earl Gideon. He wants to ask you some questions.

(Addressing the Defendant.)

You may inquire.

Direct examination.

By the Defendant:

Q. Mrs. Rhodes, you were called as a State witness in my Preliminary trial by the State Attorney?

A. I'm sorry, Judge, but I did not understand one word that man said.

The Court: Mr. Gideon, talk louder, the witness didn't understand one word you said. Please take that paper you have in your hand from over your mouth, lay it down on the table, and speak out where we can all hear you.

Mr. Harris: I understood the question, and I object to it, if the Court please, it's an improper question.

The Court: Well, I didn't understand it, so I can't rule on it being proper or improper.

[fol. 38] Go ahead now, Mr. Gideon, with your questions, and talk loud enough for all of us to hear you, I'm having difficulty trying to hear you, and the witness didn't understand anything you said. You may proceed.

By the Defendant:

Q. Mrs. Rhodes, on this morning that this crime was committed where were you?

A. On my porch.

Q. Your front porch?

A. "Uh-hu."

Q. You can see up and down the Street from your front porch?

A. "Uh-hu."

Q. You can also see down the street to the Public Telephone Booth, is that right?

A. "Uh-hu", right.

Q. The night before this crime was committed, early the next morning you and I had been drinking hadn't we?

A. Well, now, I don't know about that. I might have been in the Bar.

Q. Did you, or did you not, buy me Beer that night?

A. A drink?

Q. Yes.

A. I probably did, if you needed one.

Q. When did you first know the place had been broken into?

[fol. 39] A. When the young man . . . what's his name, Cook . . . Henry Cook, when he walked up to the porch and told me.

Q. Walked up to your porch?

A. Yes.

Q. Did he leave down there before I left the Telephone Booth?

A. Yes. He left and called the "Cops."

Q. Called the "Cops?"

A. Yes.

Q. He didn't go back down to the Pool Hall then?

A. No.

Q. Did he ever tell you that he seen me come out of this place?

A. No.

Q. When you first saw me where was I?

A. When you came out of the Alley and walked over to call a taxi.

Q. Mrs. Rhodes, will you tell this Court and Jury where I lived at this time?

A. Well, you lived down there at that hotel, but I don't know the name of it.

Q. Is it common for me to come out through the Alley?

A. That's right—I didn't think a thing about it—and when you called a Cab, I didn't think anything about that, either. I just thought you were going down town.

[fol. 40] Q. This Mr. Cook, when he come from toward the Pool Room to your place, where you were on the porch, that was about a half-block wasn't it?

A. About a half-block, yes.

Q. Could he have seen me come out the back door of that place from where he was?

A. No, I don't think so.

Q. Could you see the back door of that Pool Room from where you were?

A. No, sir.

Q. It would be impossible for him to see the back door of that place from where he was, right?

A. Right.

Q. All you saw me do was emerge from the Alley, go to the Telephone Booth and call a Cab and go away, right?

A. Well, of course, I didn't see you call the Cab, but shortly after you went in the Telephone Booth a Cab came and you got in it and left, and I just thought you called a Cab, by one coming so quick afterwards.

The Defendant: That's all.

The Court: Any questions by the State?

Mr. Harris: Yes, your Honor.

[fol. 41] Cross-examination.

By Mr. Harris:

Q. Mrs. Rhodes, did you go over to the Telephone Booth where Mr. Gideon had made the 'phone call from?

A. Did I what?

Q. Did you go over to the 'phone booth, where this man made the 'phone call from?

A. Yes.

Q. Why did you go over there?

A. Well, I just went over there, that's all.

Q. He had put that Wine down there and you went over there and got it didn't you?

A. Yes.

Q. You saw him when he put it there didn't you?

A. It was there, I saw it there, and I picked it up.

Q. You knew he put it there and you went over there and got it?

A. Yes, I went over there and got it.

Mr. Harris: That's all.

Redirect examination.

By the Defendant:

Q. Mrs. Rhodes, did you get any Wine from the Telephone Booth?

A. Yes, I did.

Q. Was it inside or outside the booth?

[fol. 42] A. Outside.

Q. Was it a bottle of Wine?

A. Yes, (measuring on finger), there was about this much in a bottle.

Q. What kind of Wine was it?

A. I don't know, I didn't pay no attention to it, I gave it to my Landlord.

Q. Gave it to your Landlord?

A. Yes, because he was sick.

Q. Would you say that was my Wine?

A. I don't know whose it was.

The Defendant: That's all.

Re-cross-examination.

By Mr. Harris:

Q. You didn't see this man put the Wine down there?

A. No, I didn't.

Q. Had you seen it there before he got to the 'phone booth?

A. I had no reason to go down to the 'phone booth, truthfully. I went down there to ask him if the Bar was open, truthfully; I know he helps out in there occasionally, and my Landlord, as I was telling you, he was sick and I saw this bottle of Wine, what there was in the bottle, sitting there on the outside of the 'phone booth and I picked it up and carried it and gave it him.

[fol. 43] Mr. Harris: That's all. You can come down.

This witness then left the stand.

Arthur Widincamp, called as a witness on behalf of the Defendant, being first duly sworn by the Clerk of this Court, testified as follows:

The Court: Will you state your name, please.

Witness: Widincamp, Arthur Widincamp (spelling name) W-i-d-i-n-c-a-m-p—its a rather odd name to spell, unless you are used to it.

The Court: You have been called as a witness by Clarence Earl Gideon, who is charged in an Information with Breaking and Entering with Intent to Commit a Misde-

meanor, he wants to ask you some questions. (Addressing the Defendant) You may proceed.

Direct examination.

By the Defendant:

Q. Mr. Widincamp, you are the owner of this building the Bay Harbor Pool Room is located in?

A. Right.

Q. Were you called to the building the morning this [fol. 44] crime was committed?

A. What morning?

Q. The morning this building was broken into, or was supposed to have been broken into?

A. Yes. I tried to call Ira Strickland and he didn't have a Telephone and I went down to his house and picked him up and carried him down there that morning.

Q. Were you around there when the Police was called?

A. The Police was already in there whenever we got there.

Q. Did you find a window broken out?

A. Yes, sir, the window on the North side, at the back, it was, was broken out and there was a drum setting up there at the window. The window was out — I know that — because I had to replace it, myself.

Q. Did Mr. Cook, at that time, say that I was the one that broke that window?

A. I don't know anything about Mr. Cook — I was down there that morning and I saw the Police there when I got there; I carried Ira Strickland with me.

Q. Did you check that window?

A. Yes, I looked at it — it was just broke out, that's all there was to it.

Q. How was this window broken?

A. Now, I don't know how it was broken, but it was broken, and the hole in it was big enough for a man to go through.

[fol. 45] Q. How was it broken?

A. It was just broke, that's all I know, the glass was broke out, but how it was broke, I do not know.

Q. Was it broken completely out?

A. Most of it was out, there was some small pieces left

in the corners at the top, but it was big enough for anybody to go through it.

Q. You mean by that that it was large enough for a person to crawl through?

A. Yes, sir.

Q. Could that window possibly have been broken by something besides a human being?

A. I don't think so. I know of nothing but a human being that would put a drum up by it.

Q. Do you know definitely that somebody broke that window?

A. Somebody had to break it.

Q. You fixed the window yourself?

A. Yes.

Q. You don't know of your own knowledge who broke it do you?

A. No, I wasn't there.

Q. You have no reason to believe Mr. Strickland broke that window out do you?

A. I've got no right to say who broke it, I can't say who [fol. 46] broke it because I didn't see anybody break it; I have no reason to believe that Ira Strickland broke it, no reason on earth to even suspect that he might have done it.

Q. If the Court sent this Jury out there to see this place they would find a new window pane in that window would they?

A. Yes, they would. There is also bars over that window now.

Q. Are you acquainted with Mr. Stickland?

A. I reckon I am, he's my son-in-law.

Q. Do you know that business well?

A. I guess I do, I run it eight months myself.

Q. Did you ever know of his leaving the building unlocked?

A. No, I don't know anything about that—but I don't think he did—I don't think he would do a thing like that.

Q. But he does drink, don't he?

A. Well, that's his business, I don't know anything about that.

The Defendant: That's all.

The Court: Any questions by the State?

Mr. Harris: No questions, your Honor.
This witness then left the stand.

[fol. 47] G. F. HALL, called as a witness on behalf of the Defendant, being first duly sworn by the Clerk of this Court, testified as follows:

The Court: Will you state your name, for the record, please.

Witness: I sign my name as G. F., but I'm known as "Shorty" nobody hardly knows my name, except my family, everybody calls me "Shorty."

The Court: Where do you reside, what is your address?

Witness: Springfield Station, Panama City, Bay County, Florida.

The Court: You have been called here as a witness by Clarence Earl Gideon, who is being tried on an Information charging him with Breaking and Entering with Intent to Commit a Misdemeanor. He wants to ask you some questions. (Addressing the Defendant.) You may proceed.

Direct examination.

By the Defendant:

Q. Mr. Hall, you work around there at the Bay Harbor Pool Hall don't you?

A. Yes, sir.

Q. On the morning this crime was committed were you around there?

[fol. 48] A. No, sir. I got there about nine o'clock, when I got up.

Q. Were Officers there investigating when you got there?

A. It was all done over with when I got there.

Q. Did you see the window that was broken out?

A. Yes, sir, I saw the window that was broke out.

Q. Was it completely broken out?

A. Yes, sir.

Q. All the glass was out of it?

A. Practically all of it, there were some small pieces left in the corners at the top, but the principal part of it was out.

Q. Who repaired that window?

A. I can't call his name right now—I'll think of it to-reetly, maybe.

Q. Mr. Strickland didn't repair it?

A. "Strick" had it repaired, but I'm trying to think of the man's name that replaced the window.

Q. Who had it repaired?

A. Strickland, the man that runs the place.

Q. You have no reason to believe Mr. Strickland broke that window out do you?

A. I couldn't say who done it—I have no right to believe who done it, because I didn't see nobody break it—No, I have no reason to believe Mr. Strickland done it.

[fol. 49] Q. Can you say how many Cigarettes were taken off?

A. I can't answer that question. I don't know how many Cigarettes were missing—I just saw there was some Cigarettes missing out of the machine when I got there, they was waiting to get an investigation on everything and was calling the "Machine man" to come straighten up the machine.

The Defendant: That will be all.

The Court: Any questions by the State?

Mr. Harris: Yes, your Honor.

Cross-examination.

By Mr. Harris:

Q. Mr. Hall, did you find the Cigarette Machine had been broken into?

A. Yes, sir.

Q. How about the "Juke" Box?

A. It had been broken into, too, yes, sir, both of the machines had been broken into.

Mr. Harris: That's all.

The Court: You may come down.

This witness then left the witness stand.

[fol. 50] ROBERT RICHARDSON, called as a witness on behalf of the Defendant, being first duly sworn by the Clerk of this Court, testified as follows:

The Court: Will you state your name for the record, please.

Witness: Robert Richardson.

The Court: What is your address?

Witness: 1404 Gulf Avenue, Panama City, Florida.

The Court: Mr. Richardson, you have been called here as a witness by Clarence Earl Gideon, who is on trial here upon an Information charging him with Breaking and Entering with Intent to Commit a Misdemeanor. He wants to ask you some questions. You may inquire, Mr. Gideon.

Direct examination.

By the Defendant:

Q. Mr. Richardson, you work as a Bar Tender at the Bay Harbor Bar do you not?

A. Yes, sir.

Q. How long have you been working there?

A. Approximately a year.

Q. You are well acquainted with Mr. Strickland?

[fol. 51] A. Junior Strickland?

Q. Yes, sir.

A. Yes, sir, I am well acquainted with him.

Q. Does he have a habit of drinking Whiskey in your Bar?

A. I don't know whether it would be a habit or not, occasionally he does.

Q. Does he have a habit of going behind the Bar and getting Whiskey and drinking it every day?

A. He has done that, but not every day, just occasionally he does that.

Q. The morning this crime was committed, what time did you go to work that morning?

A. Seven o'clock.

Q. Did you have occasion to go around and look to see if this building was broken into?

A. When I walked in—the rumor had already spread that it had been broken into—so I walked around to the

building, on the sidewalk, and I seen an Oil Can, or a Drum, it was a big can, I can't say exactly what it was, but I seen it setting up beside the window, so I just asked Miss Rosé if it had been reported, did Mr. Strickland know about it, she said she didn't know, so I tried to call Mr. Strickland, but he didn't have a 'phone number listed, so I called his Father-in-law, Mr. Widincamp, and he got in touch with him and told him that his place had been broken into.

[fol. 52] Q. Did you go back to the window?

A. No, I didn't go back to the window, I just looked at it from the sidewalk, I saw it was broken out but I didn't go back close to it.

Q. Do you have any knowledge of how that window was broken?

A. No, I have no idea how it was broken—all I know is that it was broken out.

Q. You don't know who broke it?

A. No, I wouldn't have any idea.

The Defendant: That's all.

The Court: Any questions by the State?

Mr. Harris: No questions by the State, your Honor.

The Court: You may come down, Mr. Richardson.

This witness then left the stand.

Mrs. Velva Estelle Morris, called as a witness on behalf of the Defendant, being first duly sworn by the Clerk of this Court, testified as follows:

[fol. 53] The Court: Will you state your name for the record, please?

Witness: Velva (spelling) V-e-l-v-a Estelle Morris.

The Court: Where do you reside?

Witness: Sorry, I didn't understand the question.

The Court: Where do you live?

Witness: 110 Edwin Avenue, Springfield Station, Panama City, Florida.

The Court: You have been called here as a witness by Clarence Earl Gideon, he would like to ask you some questions. You may inquire, Mr. Gideon.

Direct examination.

By the Defendant:

Q. Mrs. Morris, you are the owner of the Bay Harbor Hotel?

A. Yes, sir.

Q. I have been staying there for quite a while have I not?

A. Yes, you have stayed there for eight months, and you [fol. 54] stayed there off-and-on before that.

Q. Will you tell the Jury where the Bay Harbor Pool Room is with respect to your place of business?

A. The Bay Harbor Pool Room is across the Street from my business place.

Q. Was it uncommon for me to go across the street to the Pool Hall?

A. No, it was not uncommon at all, in fact, I think you worked there a while.

Q. On the morning of the commission of this crime was I there, had I been anywhere, or do you know?

A. What's that, now?

Q. On the morning this crime was committed, when the Bay Harbor Pool Room was broken into, did I go anywhere the night before?

A. Well, I think you went up at bed time, and went to bed. There wasn't too many in the hotel that night, I'm almost positive you went upstairs and went to bed. I know you went up, and I'm almost positive that you went to bed.

Q. Isn't it true, Mrs. Morris, that I don't ordinarily use the Telephone in the hotel when people are sleeping?

A. Yes, that's true. Most of the men are considerate of the sleepers in using the Telephone in the house.

Q. Is it not true that I went to the corner and used the Public Telephone when the guests are asleep in the hotel? [fol. 55] A. Yes, that is true. Most of the men did that, because it disturbs the sleepers, those who are asleep. I don't think you ever used the house 'phone at night.

Q. Do you know what time I got up that morning?

A. No, I wouldn't know that. I don't believe; you ordinarily got up about six-thirty or seven o'clock. I assume you got up about the same time that morning. I didn't

hear you get up during the early hours, or anything like that, if that's what you mean.

Q. Mrs. Morris, during the time I lived at the hotel did you ever know of me being out drunk?

A. No.

Q. Did you ever see me drunk?

A. No.

Q. Did you ever hear of me getting drunk?

A. No.

The Defendant: That's all.

The Court: Any questions by the State?

Mr. Harris: Yes, your Honor.

Cross-examination.

By Mr. Harris:

Q. Mrs. Morris, you don't know whether this man went [fol. 56] to bed at all that night do you?

A. Why yes, he went to bed, that is, he went upstairs. I saw him when he went up, I was sitting in the Lobby.

Q. What time was that?

A. About ten o'clock.

Q. Was that the last time you saw him?

A. Yes, that was the last time I saw him, when he went upstairs.

Q. He went upstairs?

A. Yes, he went upstairs.

Q. But you don't know whether he went to bed or not do you?

A. Why no, I don't know that. I know he went upstairs, I saw him go up, and I never heard him come down.

Mr. Harris: That's all.

This witness then left the stand.

Colloquy Between Court and Counsel.

The Court: Do you have any other witnesses, Mr. Gideon?

The Defendant: No, sir, that's all.

The Court: You are resting your case now?

The Defendant: Yes, your Honor.

[fol. 57] The Court: Do you wish to take the stand and tell the Jury your version of this case, Mr. Gideon? As I told you before, you are not required to take the witness stand, and it will not be held against you if you do not take it, but it is your privilege, and you may do so at this time if you desire to.

The Defendant: I don't care to take the witness stand, your Honor.

The Court: Allright, no one is going to insist on you taking the witness stand, it's your privilege to do as you like about it.

The Defendant: I don't care to take it.

The Court: Would you like to argue your side of this case to the Jury? Ordinarily, when a Defendant is not represented by Counsel the case is presented to the Jury on the testimony they have heard from the witness stand, but if you would like to argue this case you may do so.

The Defendant: I would like to argue the case to the Jury, your Honor.

The Court: Allright, just go over there and talk to the Jury, but you understand, do you, the difference between [fol. 58] an argument to a Jury and testifying under oath before a Jury?

The Defendant: Yes, sir.

The Court: I just wanted to make sure you understood the difference.

The Defendant: I do.

The Court: Allright, you may proceed.

Move around on the other side of the table where you will be close enough to see those Gentlemen, and let them see you, and talk loud and distinctly so they can understand what you say.

At this point the Defendant walked around the Counsel Table and stood facing the Jury, and talked to them for approximately eleven minutes, emphasizing his innocence to the charge contained in the Information filed in this case.

Mr. Harris, the Assistant State Attorney, then argued the State's case to the Jury for approximately nine minutes; after which came:

[fol. 59] THE CHARGE OF THE COURT

Gentlemen of the Jury, the Defendant, Clarence Earl Gideon, is on trial before you upon an Information charging him with Breaking and Entering with Intent to Commit a Misdemeanor. The Information was read to you at the beginning of the trial by the Assistant State Attorney. To this charge the Defendant has entered a plea of not guilty. The effect of such a plea places the burden of proof upon the State of Florida to prove this Defendant's guilt, and every material element constituting his guilt by evidence which will convince this Jury beyond a reasonable doubt that the charge is true and the Defendant is guilty.

The Defendant comes into Court with the presumption of innocence in his favor, he is presumed to be innocent of any offense until his guilt is established by the evidence in this case beyond a reasonable doubt; a reasonable doubt, however, is not a mere flimsy, shadowy doubt, amounting to the bare possibility that the Defendant is innocent, but it is such a substantial doubt in your minds, arising out of the evidence in this case, that after you have heard the testimony of the witnesses, and given the testimony of each witness full and fair consideration, then, if, upon consideration of the whole testimony you cannot say that you have an abiding conviction to a moral certainty of the truth [fol. 60] of this charge you would have a reasonable doubt, otherwise, you would have no reasonable doubt within the meaning of the law.

You, Gentlemen of the Jury, are the sole judges of the evidence, of the weight of the evidence and of the credibility of the witnesses, and in weighing the testimony of a witness, and passing upon his or her credibility, you may take into consideration the manner and demeanor of the witness upon the stand, his or her means and opportunity for knowing the things about which they testified; the reasonableness and probability of the testimony being true, the interest or lack of interest of the witness in the outcome of the case, and to all those things just apply your common knowledge of men and affairs in everyday life. In other words, just use the same sound judgment and common sense in arriving at your verdict in this case that you would use in your everyday affairs.

If there are conflicts in the testimony it is your duty to reconcile those conflicts so as to make all of the witnesses speak the truth, if you can reasonably do so; if however, you cannot so reconcile the testimony then you may discard from your consideration any and all testimony you deem unworthy of belief and base your verdict solely upon that testimony you believe to be true, because you, Gentlemen, have the right and the duty to say who is and who is not speaking the truth in this case.

I further charge you, Gentlemen of the Jury, that the [fol. 61] fact that the Defendant did not take the witness stand and testify in his own defense is not to be considered by you. There is no law that requires a Defendant to testify if they prefer not to, and the fact that this Defendant did not take the witness stand is not to be held against him by you in considering your verdict.

There are certain material elements in this case that the State of Florida must prove:

The first one is that the crime, if any, was committed in Bay County, Florida.

The second one is that it was committed within two years prior to the filing of this Information, which was filed on June 19, 1961.

The third one is that this Defendant, Clarence Earl Gideon, is the person who committed the crime.

To sum that up for you, if you should find from the evidence that Clarence Earl Gideon did, in Bay County, Florida, at any time within two years prior to the filing of the Information in this case, on June 19, 1961, unlawfully and feloniously break and enter the building of another, to wit, the Bay Harbor Pool Room, the property of Ira Strickland, Jr., the Lessee, within intent to commit a misdemeanor in said building, to wit, Petit Larceny, then, it would be your duty to return a verdict of guilty as charged.

If, however, you fail to find this state of facts, or after [fol. 62] full and fair consideration of all of the testimony in this case you have a reasonable doubt, as defined to you by the Court, then, it would be your duty to give the Defendant the benefit of that reasonable doubt and return a verdict of not guilty.

If you should find the Defendant guilty the form of your

verdict would be, We, the Jury, find the Defendant Guilty as charged. So say we all. And one of your number would sign that verdict as Foreman.

If you should find the Defendant not guilty, the form of your verdict would be, We, the Jury, find the Defendant not guilty. So say we all. And one of your number would sign that verdict as Foreman.

Any verdict reached by you must be concurred in by all of your number, and must be signed by one of your number as Foreman.

You may take the case, Gentlemen, and render your verdict.

[fol. 63] Reporter's Certificate (omitted in Printing)

[fol. 64] Filed October 11, 1961, Guyte P. McCord

31,116

Motions

Monday, October 16, 1961, Not To Be Heard

Division of Corrections

Correspondence Regulations

Mail Will Not Be Delivered Which Does Not Conform with These Rules

No. 1—Only 2 letters each week, not to exceed 2 sheets letter-size 8½ x 11" and written *on one side only*, and if ruled paper, do not write between lines. *Your complete name* must be signed at the close of your letter. *Clippings, stamps, letters* from other people, *stationery* or *cash must not be enclosed* in your letters.

No. 2—All *letters* must be addressed in the *complete prison name* of the inmate. *Cell number*, where applicable, and *prison number* must be placed in lower left corner of

envelope, with your complete name and address in the upper left corner.

No. 3 *Do not send any packages without a Package Permit.* Unauthorized *packages* will be destroyed.

No. 4 *Letters* must be written in English only.

No. 5 *Books, magazines, pamphlets,* and *newspapers* of reputable character will be delivered *only if* mailed direct from the publisher.

No. 6 *Money* must be sent in the form of *Postal Money Orders* only, in the inmate's complete prison name and prison number.

Institution: State Penitentiary, Raiford, Fla.
Cell Number: D 9.
Name: Clarence Earl Gideon.
Number: 003826

SUPREME COURT, STATE OF FLORIDA

PETITION FOR WRIT OF HABEAS CORPUS Filed: Oct. 11, 1961

Deny

1. I, Clarence Earl Gideon, inform this court that I am a pauper without funds or any possibilty of obtaining financial aid and I beg of this court to listen and act upon my plea.

2. On the 3rd day of June, 1961 A.D. I was arrested and charged with the crime of breaking and entering with the intent to commit a misdemeanor, to wit, petty larceny, and that I plead not guilty to this charge. That on the 4th day of August 1961 A.D. I was tried in court of Bay County, the 14th District Court in and for the State of Florida, and was found guilty as charged. That on the 25th day of August 1961 A.D. was sentenced to a term of five years (5 yrs.) in the State Prison.

[fol. 65] 3. I, Clarence Earl Gideon, will show this court that I did not have a fair trial and was denied my constitutional rights that is guaranteed by the Constitution and the Bill of Rights by the United States Government.

4. I was without funds and without an attorney. I asked this court to appoint me an attorney but they denied me that right. I told this court of the 14th District of

Florida, County of Bay, that United States Supreme Court of the United States of America had ruled that the State of Florida should see that everyone who is tried for a felony charge should have legal counsel. But the court ignored this plea.

5. I, Clarence Earl Gideon, claim that I was denied the rights of the 4th, 5th and 14th amendments of the Bill of Rights.

6. I sent a petition from the county jail of Bay County to the United States District Court at Tallahassee, Florida. But the sheriff's office and officials refuse to let it go out which is contrary to the laws of the United States Government.

[fol. 66] 7. I, Clarence Earl Gideon, beg of this court to issue a Writ of Habeas Corpus and to set aside the 5 year sentence that I have by the Court of Bay County, 14th District in and for the State of Florida, and to give me the aid that I need.

Signed: Clarence Earl Gideon.

STATE OF FLORIDA,
County of Union:

Subscribed and sworn to before me, a Notary Public, this 9th day of October, A.D., 1961.

Lawrence — —, Notary Public.

Notary Public, State of Florida at Large.

My commission Expires Sept. 19, 1962.

Bonded by American Surety Co. of N. Y.

[fol. 67] In the Supreme Court of Florida, July Term, A. D. 1961

Clarence Earl Gideon, Petitioner,

vs.

H. G. Cochran, Jr., Director, Division of Corrections, Respondent.

Order Denying Petition for Writ of Habeas Corpus
October 30, 1961

The above-named petitioner has filed a petition for writ of habeas corpus in the above cause, and upon consideration thereof, it is ordered that said petition be and the same is hereby denied.

[fol. 68] Clerk's Certificate (omitted in printing).

[fol. 69] Supreme Court of the United States, October Term, 1961

No. 890 Misc.

Clarence Earl Gideon, Petitioner,

vs.

H. G. Cochran, Jr., Director, Division of Corrections, Respondent.

Order Granting Motion for Leave to Proceed In Forma Pauperis and Petition for Writ of Certiorari—June 4, 1962.

On Petition for Writ of Certiorari to the Supreme Court of the State of Florida.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be,

and the same is hereby, granted. The case is transferred to the appellate docket as No. 1011. In addition to other questions presented by this case, counsel are requested to discuss the following in their briefs and oral argument:

"Should this Court's holding in Betts v. Brady, 316 U.S. 455, be reconsidered?"

June 4, 1962.

Mr. Justice Frankfurter took no part in the consideration or decision of this application.

☆ U. S. GOVERNMENT PRINTING OFFICE 1962 672345 4/4